

April 17, 1964

Opinion No. 153
Answered by Letter
(Eichhorst)

Mr. William A. McDonnell
Acting Chairman
Division of Commerce and
Industrial Development
Jefferson Building
Jefferson City, Missouri



Dear Mr. McDonnell:

This is in answer to your request for an opinion of this office which reads in part as follows:

" * * * our Commission is requested to approve the issuance of general obligation bonds by the City of Poplar Bluff, Missouri, for the purpose of financing the construction of an industrial type building for which there is as yet no lessee. We wish to request a ruling by the Attorney General as to whether or not our Commission, aside from the wisdom of a bond issue under such circumstances, has the legal authority to approve such a project."

The Missouri Industrial Development Project Law is found at Sections 71.790 - 71.850, RSMo Cum. Supp. 1963. The most pertinent sections to your inquiry are Sections 71.807 and 71.810, RSMo Cum. Supp. 1963. They are:

71.807. "The division of commerce and industrial development shall promptly examine the application and make such investigation thereof as it deems necessary. The division shall approve the project when it finds that the project:

"(1) Will further the economic development of, and employment in, the municipality and the state;

"(2) Will further the general welfare of the municipality and the state; and

"(3) Is economically feasible and will not become a burden to the taxpayers of the municipality."

71.810. "The division of commerce and industrial development shall notify the municipality submitting the plan of its approval or disapproval of the plan. The division may approve the plan subject to such conditions as it may deem necessary to assure that the project will meet the requirements of section 71.807 and the municipality submitting the plan shall incorporate the conditions in carrying out the project."

These two sections grant to the Division the authority to approve - fully or conditionally - or to disapprove a submitted proposal. If the Division, in its discretion, believes that the provisions of Section 71.807, RSMo Cum. Supp. 1963 are met, then the project should be approved. Of course, the Division should not approve a submitted proposal unless it is the finding of the Division, in its discretion, that the project would further the economic development and general welfare of the municipality and state and be economically feasible.

There is no provision in the statute that requires, as a condition precedent to approval, that the proposal have a firm lessee. Hence, there is no legal reason why the Division does not have the power or authority to approve the proposal. However, I should think that the fact that there is no firm lessee would weigh heavily on the question of economic feasibility and could easily be the deciding factor as to whether the bonds would become a burden on the taxpayers. This ground alone could be sufficient reason to deny approval of the project. The burden of discretion imposed upon the Division is a heavy one and may on occasion require the Division to deny proposed

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projects and thus protect a municipality against its own folly. The Division as experts in this field must carefully weigh all the factors and exercise its own judgment in applying the yardsticks spelled out in these statutes.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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